

The Broadcast Team, Inc.
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RE: CG Docket No. 02-278 Preemption

The Broadcast Team, Inc. is filing these comments in response to a request for comment disseminated by the Federal Communications Commission pursuant to 47 CFR §§ 1.415, 1.419. The Broadcast Team, Inc. is a service provider that can broadcast thousands of prerecorded messages to residences and businesses around the country. We have been in business since 1992 and we have always endeavored to comply with all laws applicable to our services. Our dialers are programmatically restricted from placing any intrastate call, which is the heart of question to the FCC. Does the FCC have exclusive rulemaking authority and jurisdiction over interstate telephone calls and does that authority preempt state law?

The Federal Communications Commission has before it TSA Stores, Inc. (TSA) Petition For Declaratory Ruling with Respect to Certain Provisions of the Florida laws and regulations, filed in response to an enforcement action filed in Florida by the Florida Department of Agriculture and Consumer Services to enforce Florida law upon TSA regarding the delivery of prerecorded messages to TSA's clients.

Whether a state may impose requirements on interstate communications should include an analysis under the Supremacy Clause of Article VI of the U.S. Constitution. Under the Supremacy Clause, a state may not regulate conduct in an area of interstate commerce intended by the Congress for exclusive federal regulation. The key inquiry is whether Congress intended to preempt state laws on the same subject. Section 2(a) of the Act grants the Commission jurisdiction over all interstate and foreign communications. Interstate communications are defined as communications or transmissions between points in different states. Section 2(b)(1) of the Act generally reserves to the states jurisdiction over intrastate communications. Intrastate communications are defined as communications or transmissions between points within a state.

On December 20, 1991, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102-243, which amended the Communications Act of 1934 by adding a new section, 47 U.S.C. § 227. The TCPA mandated that the Commission implement regulations to protect the privacy rights of citizens by restricting the use of the telephone network for unsolicited advertising. On September 17, 1992, the Commission adopted a *Report and Order* (CC Docket 92-90, FCC No. 92-443), which established rules governing unwanted telephone solicitations and regulated the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines.

The Communications Act, specifically section 227 of the Act, establishes Congress' intent to provide for regulation exclusively by the Commission of the use of the interstate telephone network for unsolicited advertisements by facsimile or by telephone utilizing live solicitation, autodialers, or prerecorded messages. The TCPA also preempts state law where it conflicts with the technical and procedural requirements for identification of senders of telephone facsimile messages or automated artificial or

prerecorded voice messages. By its terms, the TCPA shall not "preempt any State law that imposes more restrictive *intrastate* requirements or regulations on, or which prohibits (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements; (B) the use of automatic telephone dialing systems; (C) the use of artificial or prerecorded voice messages; or (D) the making of telephone solicitations."

According to the provisions described above, Florida can regulate and restrict *intrastate* commercial telemarketing calls. The Communications Act, however, precludes Florida and all other states from regulating or restricting interstate commercial telemarketing calls (including prohibiting prerecorded messages). Therefore, Florida and other states cannot apply its statutes to calls that are received in Florida and originate in another state or calls that originate in Florida and are received in another state.

The Rules note that although states may impose more stringent restrictions on intrastate telemarketing, state rules that purport to apply to interstate telemarketing that are inconsistent with and more restrictive than the Commission rules *negate* the federal objective of creating uniform national rules and impose heavy compliance costs for companies that use the telephone network to communicate to a national consumer database. Florida's complete ban on recorded messages altogether is clearly contrary to those Rules and is manifestly more restrictive than Federal law.

The law clearly states that the FCC has exclusive jurisdiction of interstate communications and limits the purview of state law to that of jurisdiction over calls originating and terminating in a single state. As such, the FCC should state firmly that it has exclusive jurisdiction and that state laws are preempted by the TCPA. This issue has come to the attention of the FCC in numerous cases and time and again the FCC has failed to act to settle the issue of preemption. Failure to decide this issue in the past has led the courts to intervene. It's time for the FCC to state in clear language that when dealing with interstate calls, the TCPA preempts state law.

Sincerely,

Robert J. Tuttle
CEO
The Broadcast Team, Inc.